

CITY COUNCIL RESOLUTION

WHEREAS, City of Memphis Mayor Willie W. Herenton officially announced the resignation of his tenure as Mayor and retirement on July 30, 2009 in a letter to the Memphis City Council Chairman dated July 6, 2009; and

WHEREAS, the Memphis City Council Chairman accepted the Mayor's resignation and declares the office vacant as of midnight on July 30, 2009; and

WHEREAS, the City of Memphis Charter provides that in the event the Office of the Mayor becomes vacant, the City Council Chair, shall serve as Mayor for up to 180 days following such vacancy, at which time the public shall elect a duly qualified person to serve the remaining unexpired term of the vacated office, provided that if no general or municipal election is scheduled to occur within 180 days of such vacancy, a special election shall be held within 90 days of such vacancy to elect a candidate to fill the Office of the Mayor through the end of the remaining unexpired Mayoral term; and

WHEREAS, no election is scheduled in the next 180 days, therefore a special election will be necessary to fill the Office of the Mayor through the end of the remaining unexpired Mayoral term.

NOW, THEREFORE BE IT RESOLVED, that the Memphis City Council officially accepts the Mayor's resignation.

BE IT FURTHER RESOLVED, that the Shelby County Election Commission prepare for a special municipal election to fill the Office of the Mayor through the end of the remaining unexpired Mayoral term to be held 90 days from the day of his retirement.

BE IT FURTHER RESOLVED, that the FY 2010 operating budget be amended to transfer \$1,000,000 from the General Fund to be allocated to the Shelby County Election Commission for the cost of holding the special municipal election.

MYRON LOWERY
CITY COUNCIL CHAIRMAN

I hereby certify that the foregoing is a true copy
and document was adopted, approved by the
Council of the City of Memphis in regular
session on

Date JUL 07 2009

Valerie C. Bruce
Deputy Comptroller-Council Records

Budget
Finance
120



DR. WILLIE W. HERENTON - Mayor
KEITH L. McGEE - Chief Administrative Officer
LAW DIVISION
ELBERT JEFFERSON, JR - City Attorney

**VIA FACSIMILE: (901) 545-3676
AND U.S. MAIL**

July 22, 2009

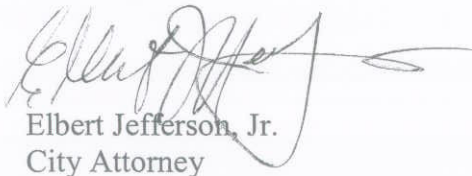
Richard L. Holden, Administrator of Elections
Shelby County Election Commission
150 Washington Avenue
Suite 205
Memphis, Tennessee 38103

Dear Mr. Holden:

Last evening, the Memphis City Council approved the minutes related to a resolution declaring the Office of Mayor to be vacant effective July 30, 2009. We have enclosed a copy of the resolution. A copy of the minutes associated with the resolution will become available next week.

Should you need additional information, please contact this office.

Sincerely,



Elbert Jefferson, Jr.
City Attorney

Enclosures

xc: Mayor Willie W. Herenton
Memphis City Council
Allan Wade, Esq.
Monice Hagler, Esq.
Jack Payne, Jr., Assistant City Attorney
Roland McElrath, Finance Director

AUG 7 10:56



TENNESSEE

DR. WILLIE W. HERENTON - Mayor
KEITH L. McGEE - Chief Administrative Officer
LAW DIVISION
ELBERT JEFFERSON, JR. - City Attorney

**VIA FACSIMILE: (901) 545-3676
AND U.S. MAIL**

July 31, 2009

Richard L. Holden, Administrator of Elections
Shelby County Election Commission
150 Washington Avenue
Suite 205
Memphis, Tennessee 38103

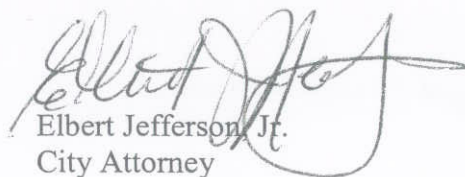
Dear Mr. Holden:

On June 30, 2009, the Memphis City Council approved the minutes related to a resolution declaring the Office of Mayor to be vacant effective July 30, 2009. We have previously provided you with a copy of the resolution. As you aware, there have been questions regarding the official date of retirement of former Mayor Willie Herenton. Please find enclosed a copy of the formal written notice of retirement presented by Mayor Herenton on yesterday. The receipt of the enclosed retirement notice makes it unequivocal as to the ability of the Election Commission to proceed with the special election.

This correspondence is to further comply with TCA 2-14-101 et seq., requiring notification and special election to be held within a specified period of time after receiving notice of the vacancy in the office. It is the opinion of this office that state law controls relative to the timeframe within which the special election is to be held.

Should you need additional information, please contact this office.

Sincerely,



Elbert Jefferson, Jr.
City Attorney

Enclosure

xc: Myron Lowery, Mayor Pro Tem
Memphis City Council
Allan Wade, Esq.
Monice Hagler, Esq.
Jack Payne, Jr., Assistant City Attorney
Roland McElrath, Finance Director

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WHEREAS, the City of Memphis Charter provides that in the event the Office of the Mayor becomes vacant, the City Council Chair, shall serve as Mayor for up to 180 days following such vacancy, at which time the public shall elect a duly qualified person to serve the remaining unexpired term of the vacated office, provided that if no general or municipal election is scheduled to occur within 180 days of such vacancy, a special election shall be held within 90 days of such vacancy to elect a candidate to fill the Office of the Mayor through the end of the remaining unexpired Mayoral term; and

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MYRON LOWERY
CITY COUNCIL CHAIRMAN

I hereby certify that the foregoing is a true copy
and document was adopted, approved by the
Council of the City of Memphis in regular
session on

Date JUL 07 2009

Valerie C. Grupe
Deputy Comptroller-Council Records

Budget
Finance
420

MEMPHIS CHARTER COMMISSION

2008 Amendment No. 6: Filling Vacancy in the Office of the Mayor

2008 Amendment No. 6, adopted by the City of Memphis Charter Commission on August 21, 2008, proposes the City of Memphis Charter be amended to change the procedure for filling any vacancy in the Office of the Mayor as follows:

Filling Vacancy in the Office of the Mayor.

In the event the Office of the Mayor becomes vacant, the City Council Chair, who will at that time have the title of Mayor Pro-Tem, shall serve as Mayor for up to 180 days following such vacancy, at which time the public shall elect a duly qualified person to serve the remaining unexpired term of the vacated office, provided that if no general or municipal election is scheduled to occur within 180 days of such vacancy, a special election shall be held within 90 days of such vacancy to elect a candidate to fill the Office of the Mayor through the end of the remaining unexpired Mayoral term.

I, Roland McElrath, Director of City of Memphis Division of Finance, hereby certify this Amendment will result in no fiscal impact to the City of Memphis on an annual basis

For the Amendment _____

Against the Amendment _____

ITEM #14-07-2009

PREPARED BY: Rosemary Barbee

APPROVED BY: Election Commission

RESOLUTION REQUESTING THE SHELBY COUNTY BOARD OF COMMISSIONERS TO APPROVE REVISIONS TO THE SHELBY COUNTY ELECTION COMMISSION FY 2010 PERSONNEL AND OPERATING BUDGET IN THE AMOUNT OF \$1,000,000 FOR THE CITY OF MEMPHIS SPECIAL ELECTION FOR THE OFFICE OF MAYOR ON OCTOBER 15, 2009; AND REQUESTING THE CITY OF MEMPHIS REIMBURSE SHELBY COUNTY FOR SAME AS REQUIRED BY LAW.

WHEREAS, The City of Memphis Charter requires that in the event the Office of the Mayor becomes vacant, the City Council Chair, shall serve as Mayor for up to 180 days following such vacancy, at which time the public shall elect a duly qualified person to serve the remaining unexpired term of the vacated office, provided that if no general or municipal election is scheduled to occur within 180 days of such vacancy, a special election shall be held within 90 days of such vacancy to elect a candidate to fill the Office of the Mayor through the end of the remaining unexpired Mayoral term; and

WHEREAS, On July 21, 2009, the City Council passed a resolution declaring the Office of Mayor to be vacant effective July 30, 2009, and requesting that the Election Commission hold said election, and the Election Commission received notice of same; and

WHEREAS, In accordance with Tenn. Code Ann. § 2-14-102, the Election Commission is required to hold a special election not less than 75 days nor more than 80 days after receiving notice of the facts requiring a special election when there is no regular primary or general election already being held within 30 days of such notice; and

WHEREAS, By letter dated July 31, 2009, the City Attorney's Office opined that the state law provisions for holding special elections preempt any City Charter provisions to the contrary; and

WHEREAS, A special election will be necessary to fill the Office of Mayor through the end of the remaining unexpired Mayoral term, and

WHEREAS, Tennessee Code Annotated 2-12-109 (b) states, when a municipal election is not held on the same day as a county-wide election, all expenses, including compensation of its employees and election officials, incurred by the county election commission or its members in the performance of its duties shall be paid by the municipality upon certification of said expenses by the chair and secretary of the county election commission, and

WHEREAS, The City Council approved in a resolution on July 7, 2009, that its FY2010 operating budget be amended to transfer \$1,000,000 from their General Fund to be allocated to the Shelby County Election Commission for the cost of holding the special municipal election, and

WHEREAS, The Shelby County Election Commission met on August 4, 2009 and agreed to hold a Special Election for the City of Memphis on October 15, 2009, and

WHEREAS, An amendment to the FY2010 budget of the Shelby County Election Commission is required to reflect the expenditures for a special municipal election, and

WHEREAS, The Shelby County Election Commission requests reimbursement from the City of Memphis in the amount of \$1,000,000 to Shelby County Government.

NOW, THEREFORE, BE IT RESOLVED By the Shelby County Election Commission, that a Special Election be held for the City of Memphis for the Office of Mayor on October 15, 2009.

BE IT FURTHER RESOLVED, That the Shelby County Election Commission requests from the Board of Commissioners that the FY 2010 Personnel and Operating Budget be revised in the amount of \$1,000,000.

BE IT FURTHER RESOLVED, That all costs are to be reimbursed by the City of Memphis for the special election and the City of Memphis is hereby requested to reimburse Shelby County upon receipt of the certified expenses by the Chairman and Secretary of the Shelby County Election Commission.



Bill Giannini, Chairman



Myra Stiles, Secretary



Robert D. Meyers, Member



Brian Stephens, Member



Shep Wilbun Jr., Member

Adopted: 8-19-2009